



**Department of Energy**  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

04-PRO-0369

MAY 04 2004

Mr. T. E. Logan, President  
Bechtel Hanford, Inc.  
3070 George Washington Way  
Richland, Washington 99352


Dear Mr. Logan:

CONTRACT NO. DE-AC06-93RL12367 - CONTRACT MODIFICATION M215

Enclosed for your files is one fully executed copy of the subject contract modification.

If you have any questions, please contact me on (509) 376-8853.

Sincerely,

  
Richard O. Puthoff  
Contracting Officer

PRO:GHB

Enclosure

cc w/o encl:  
S. L. Feaster, BHI

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>	1. CONTRACT ID CODE	PAGE 1 OF 11 PAGES

2. AMENDMENT/MODIFICATION NO. M215	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. None	5. PROJECT NO. (if applicable)
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6. ISSUED BY U.S. DEPARTMENT OF ENERGY RICHLAND OPERATIONS OFFICE P.O. BOX 550, MSIN A7-80 RICHLAND, WA 99352	7. ADMINISTERED BY (if other than Item 6)
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Bechtel Hanford, Inc. 3070 George Washington Way Richland, WA 99352	(X)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC06-93RL12367
CODE	FACILITY CODE	10B. DATED (SEE ITEM 13) 01/15/93

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above-numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:

- (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment, (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

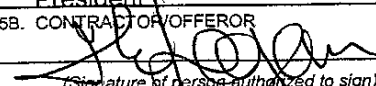
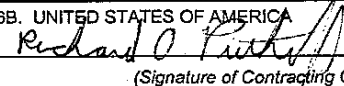
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority). THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual agreement of the contracting parties.
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor \_\_\_ is not, X is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to revise Section I of the contract to add paragraph b (4) to Contract Clause I-53, DEAR 970.5215-3, Conditional Payment of Fee, Profit, or Incentives – Facility Management Contracts (JAN 2004) and Alternate I (JAN 2004) and Alternate II (JAN 2004) and to add Contract Clause I-55, FAR 52.243-2, Changes – Cost Reimbursement (AUG 1987) Alternate IV (APR 1984).

Replacement pages I-iv and I-73 through I-81 are attached.

15A. NAME AND TITLE OF SIGNER (Type or print) Thomas E. Logan President	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Richard O. Puthoff
15B. CONTRACT/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 4/26/04
16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	16C. DATE SIGNED 4/28/04

DE-AC06-93RL12367  
Section I  
Modification M215

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- (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
  - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
  - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
  - (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.
  - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (v) At the end of the contract:
  - (A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or
  - (B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
  - (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

- (i) Type A accident (defined in DOE Order 225.1A).
  - (ii) Two Second Degree performance failures during an evaluation period.
- (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
- (i) Type B accident (defined in DOE Order 225.1A).
  - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
  - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic

breakdown.

- (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Minimum requirements for specified level of performance.
- (1) At a minimum the contractor must perform the following:
    - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
    - (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
    - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.
  - (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (e) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

- (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
- (3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

**I-54    DEAR 952.231-71 INSURANCE – LITIGATION AND CLAIMS**  
**(APR 2002)**

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
  - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
  - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
  - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may



require or approve and with sureties and insurers approved by the contracting officer.

- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-
  - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
  - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
  - (1) Which are otherwise unallowable by law or the provisions of this contract; or
  - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-
  - (1) Willful misconduct,
  - (2) Lack of good faith, or
  - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
  - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
  - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
  - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
  - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-
  - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
  - (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**I-55 FAR 52.243-2 CHANGES--COST-REIMBURSEMENT (AUG 1987)**  
**ALTERNATE IV (APR 1984)**

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the facilities or work described in the schedule.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the --
  - (1) Estimated cost, delivery or completion schedule, or both;

- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Any related contract with the Contractor may be equitably adjusted if it provides for adjustment and is affected by a change ordered under this clause.